BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on	)	
Universal Service	)	
	)	
Federal-State Joint Board on	)	
Universal Service Seeks Comment	)	
On Certain of the Commission's	)	
Rules Relating to High-Cost Universal	)	
Service Support	)	

COMMENTS OF TRI COUNTY TELEPHONE ASSOCIATION, INC.

Tri County Telephone Association, Inc. ("TCT") and its subsidiary, TCT WEST, Inc. ("TCT WEST"), herein referred to as "the Companies,"[1] by and through their counsel, David A. Irwin and Gregory V. Haledjian of Irwin, Campbell and Tannenwald, P.C., hereby respectfully respond to the Federal Communications Commission ("FCC") Public Notice, FCC 04J-2.[2]

1. TCT, a cooperative, was formed in November 1953 and it presently serves 864 members with 1,094 lines covering an area of over 3,600 square miles or 1 line in every 3-¼ square miles. The ability to establish this business and service this area rested solely with the dedication of six employees, Rural Utility Service ("RUS") loans provided by the U.S.

[1] TCT and its subsidiary, TCT WEST, are incumbent rural local exchange carriers serving 6,556 customers in the exchanges of Basin, Burlington, Frannie, Greybull, Hamilton Dome, Hyattville, Lovell, Meeteetsee and Ten Sleep in northern Wyoming and 23 cross-boundary tributary customers on ranches in southern Montana. Their serving area covers over 4,600 square miles.

[2] *Federal-State Joint Board On Universal Service Seeks Comment On Certain Of The Commissions Rules Relating To High-Cost Universal Service Support*, Public Notice, CC Docket No. 96-45, FCC 04J-2. (August 16, 2004)

Department of Agriculture, and historical toll settlement formulas that provided embedded universal service support.

2. In 1994, TCT raised sufficient funding to purchase from US West the exchanges between and adjacent to its own serving area; this serving area became known as TCT WEST, a wholly owned subsidiary of the cooperative. Because of years of neglect, the plant acquired from US West (now Qwest) was not capable of providing the quality of service expected in Wyoming and, as a consequence the Wyoming Public Service Commission requested plant upgrades as a condition of purchase approval.

3. Given the geographical arrangement of the combined companies, a highly unusual network design was developed. All nine central offices were removed and replaced by a single electronic central office in a central community. From that central office, two extremely large fiber rings (and several smaller linear add/drop fiber extensions) were constructed linking 63 small digital loop concentrators together in a common network. These remotes were placed such that nearly all customers, even in the most remote areas, are within 12 kilofeet of a fiber terminal, which converts the fiber optical signal to an electrical signal for transport to the each customer's location using the original copper facility. This design permitted notable cost savings and a highly reliable network capable of meeting future telecommunications requirements.

4. As technology, knowledge and customer interest increased, broadband services have been introduced, which are presently in the form of ADSL and VDSL. Today, 96% of the Companies' customers -- even those over 100 miles from the central office -- have immediate access to high speed Internet service; in fact, the company offers nothing less than 1 megabit per second "up" and "down" ADSL internet capacity. The remaining 4% of the Companies'

customers need only request broadband service, which can be provided within 60 days of an order.

5. Video services are available to a majority of the Companies customers; however, there is, generally speaking, a limitation of 4 kilofeet for 3 channels of video, plus 1 megabit of high speed Internet and voice services operating simultaneously. Current technology costs prevent further installation in extremely sparsely populated areas; however, these limitations are rapidly being eliminated as time and deployment reduce costs.

6. Finally, the "last mile" copper solution will no longer be a viable option as the older vintage copper plant deteriorates. This has happened in the case of the small village of Ten Sleep, Wyoming and as a consequence the benefits of "fiber to the home" will be a reality for most of the residents later this year with the balance being served by fiber soon after the 2005 Spring thaw.

7. There can be no doubt that the TCT/TCT WEST serving area, one of the most expensive areas to service in the conterminous United States, has comparable services and rates equivalent to those in urban areas.

Universal Service Mechanisms Meet program Objectives

8. It is intended from the above overview that the adequacy of the existing rural support mechanisms be clearly demonstrated. Not only did these mechanisms allow the unique and advanced network to be constructed, the efficiencies gained by the Companies have allowed modern day broadband services to be made available to the most distant of rural citizens. Not only are cattle, wheat and barley being bought and sold by ranchers many miles from their markets, each evening customers are watching their grandchildren play football and basketball or winning a debate tournament over a local video channel dedicated to each community. And

while broadband costs are not included for Universal Service Fund support purposes, the underlying infrastructure allows this miracle to come to rural America.

9. Obviously, not only can these objectives of national communications policy be accomplished, in the case of the TCT Companies, they have been met and done so without additional funding, laws, regulatory rules, incentives or changes in public policy. In other words, the Universal Service Fund support process works extremely well and should not be changed in any significant manner. The exceptions are those components that have produced unintended results that are contrary to public policy objectives.

10. It is for these reasons and within this basic framework that the following comments are offered.

Basic Principles

11. In addition to the basic principles outlined in the Telecommunications Act of 1996[3], any modifications to current procedures must also focus on only those areas within a state, study area or exchange that require support in order to meet the objectives of "reasonably comparable services and rates" to those in urban areas.

12. Second, Universal Service Fund support administrative rules, procedures and processes must be applied equally and consistently to all who apply for support. Assuming that a form of costs is to remain the basis for support determination, then all parties who receive such support should be required to submit costs on the same basis. The concept of applying the cost basis of an incumbent to a new entrant on the assumption of comparable costs or competitive neutrality is not viable or sustainable in an ever changing technological world and only serves to wreck havoc upon any competitive model.

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[3] The Companies specifically refer to those principles found in 47 U.S.C. § 254 (b).

13. Third, the Federal-State Joint Board on Universal Service ("Joint Board") may want Universal Service Fund support to be used as a vehicle to induce competition in rural areas, as well as to ensuring the availability of supported services to all citizens. If so, however, care must be taken ensure a competitive environment free from not only barriers to entry, but also of any impediments to open competition, i.e., regulatory constraints that can not be applied to one and not all, models focusing on one technology can not be applied to all technologies, etc.

14. Finally, as advances in technology break down the cost barriers of distance and density and as companies develop additional revenue streams using the same plant (such as broadband services), and as soon as the objectives of the national telecommunications policy of universal service are met, the need to continue support must be re-examined with a focus on the elimination of support programs. Mechanisms created in the monopoly-driven underdeveloped environment of rural America in the last century may not be applicable or required in a highly competitive and ever improving technological environment in this century. The Joint Board must encourage rural providers to: (1) face the realities brought on by changes in national communications policy and industry structure, (2) examine the wealth of new opportunities, and (3) maximize the use of modern facilities and technologies. Failure to do so will render rural telephone networks the Amtrak of the early part of this century.

Definition of "Rural" for Universal Service Purposes

15. There are three elements in the determination of "high cost" in the provision of telecommunications services. Two are externally driven: first is subscriber density, that is, the number of lines served within a specifically defined geographical area; and second is the distance between customers. For example, if there are few customers and they are evenly spread over an area, the costs will be higher than in a small cluster of inhabitants. The third element consists of

the components that determine the economies of scale. These include the size of the subscriber base, composition of the area served, organizational structure, number and locations of subsidiary companies, supporting entities (laboratories, manufacturing units), etc.

16. The present definition of a "Rural" carrier goes a long way in attempting to recognize these characteristics; however, should the resulting anomalies prove of too great a magnitude to allow continued use of the current definition, the Companies first suggest that geographical serving areas within a study area be disaggregated into cost zones in the same manner authorized by the Commission in the past and that Universal Service support then be targeted to each of the areas based on a zone's cost-per-loop. This eliminates the problem of new Eligible Telecommunications Carriers ("ETCs") obtaining support for loops in villages where the cost-per-loop has been determined on an aggregated basis and is not representative of the costs within any lower cost areas. If the zones were established using a prescribed distance/density factor, the first two cost causing factors mentioned above would be considered with greater precision than at present.

17. In order to recognize the benefits that derive from the economies of scale, the Joint Board could recommend expense caps per line based on total company size. The larger the company, conglomerate or holding company in lines and/or companies, the lower the cap. Inasmuch as larger companies cross state lines, and the economies of scale are not state specific, this approach should be administered on a nationwide basis.

18. In summary, the Companies responding herein do not necessarily endorse a change in the definition of a rural company; however should the Joint-Board see a change as necessary, then the problems cited in the Public Notice could be resolved by requiring disaggregation based

on the factors of distance and density and expense caps based on company size to account for the economies of scale.

Study Areas Should be Consolidated

19. In concert with the basic principle of equity discussed above, all operating areas within a defined jurisdiction (a state) should be consolidated in to a single study area. While this concept may be moot if a more precise targeting of support is used (see above), allowing a continuation of multiple study areas within a state as allowed in the frozen study area boundaries rule of November 15, 1984, has now, twenty years later, ignored many of the benefits of economies of scale, created a competitive inequity, remains an unnecessary drain on vital USF resources and should be phased out.

Actual Costs Should Be The Basis of Support

20. The use of forward-looking costs for the purpose of creating equitable competition -- to mitigate the impact of monopoly driven engineering practices or even to lower support as a result of imitating a low cost, most efficient provider – has lost any value that its proponents have claimed in the past. Thus, the concept is no long viable. Other forces are driving competitive equity and the "forward-looking costs" approach has become a burden to companies, regulators and support administrators. Revenues paid by customers are not forward looking, nor are the wages of employees, the cost of trucks, the price of fiber or the electronics involved in the provision of such services. Of equal importance, the interest on RUS loans and the patronage dividends paid to cooperative members do not reflect the forward-looking costs of operations.

21. Further, the interpretation of forward looking cost components vary widely; for example, in one jurisdiction forward looking local rates vary from just over $16.00 to approximately $88.00 for the provision of service in similar areas. Variations will continue to

exist and even become more pronounced as new technologies are introduced, competition-driven efficiencies are put in place and economic factors change as a result of external events (such as the price of gasoline).

22. The only inarguable costs are those reflected on audited income statements and balance sheets supported by the cancelled checks and other forms of journal entry documentation that are prepared in accordance with prescribed accounting principles. For the sake of equity, this should be the common basis on which all providers determine their costs that are submitted for support consideration. If the basis is not consistent, neither will be the resulting level of support. Any attempt to create and administer a new basis magnifies the inequity of results and thoroughly disrupts the natural flow of a competitive process in an environment of free enterprise. The continually contested results of the non-rural program clearly demonstrate these inherent problems.

23. Finally, as mentioned above, the perceived inequities contained in actual costs have been driven out by the migration to a competitive marketplace. This can only continue in a rapid manner as new technologies and efficiency requirements are reflected in the actual operating costs of providers.

Forward Looking Economic Cost Estimation Is Not Viable

24. Inextricably linked to the above discussion is the issue of cost estimation through use of computerized modeling techniques. The TCT Companies believe very strongly that the frailties pointed out by the Rural Task Force[4] not only still prevail but the divergences have grown even wider in the ensuing years as each rural company has responded in its own way to

[4] *See* Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 at paras. 174-176 (2001), as corrected by Errata, CC Docket Nos. 96-45, 00-256 (Acc. Pol. Div. rel. June 1, 2001)) (Rural Task Force Order).

the inroads of competition and the need to modernize networks. Indeed the network developed by TCT is a clear example of a modern unique network designed for maximum efficiency along with increased service opportunities. Constructing a model that would appropriately estimate these costs along with costs of several hundred other like rural providers building unique networks is an impossible task of very little value. One only needs to examine the perceived inequities of the non-rural model to see the destruction of integrity that can result from an extremely expensive effort. Finally, it is not only the accuracy of support that is important, the impact of over or underestimation of costs directly affects the integrity of local rates and state access charges as well.

Support Basis For Competitive ETCs Should Be The Same As Incumbent LECs

25. The concept of support portability is one are where the present system is in dire need of repair. As indicated above, equity in the administration of the Universal Service Fund is of high priority. Such can only be gained if all applicants follow the same procedures in the determination and presentation of costs. The absence of equity can only result in distortions, which, in turn, can only result in competitive disruption. While competitive ETCs are not subject to the FCCs accounting and cost allocation rules, there is no reason these rules should not be applied in the Universal Service Fund support distribution process. In addition, while the competitive ETCs may look at such requirements as an administrative burden, so it must be for incumbent providers. If using the same guidelines is a burden for one provider, so must it be for all. In fact, it is totally inappropriate for one party to claim an exemption from administrative requirements when seeking the same funding. Finally, as mentioned above, the idea of providing support through portability is absurd given the widely disparate cost characteristics of new technologies. For example, a wireless ETC operating in the territory of the Companies will

receive support that is over 130% of their current price. If USF flow-through were required they would write a check each month to each of their customers! Obviously, this result was never intended in the formulation of support portability; however, it is a clear example of using the costs of one technology to support the costs of another. In other words, it simply does not work.

Support for Transferred Exchanges Should Not Be Changed

26. Admittedly, the condition of many rural exchanges owned by larger companies does not measure up to the standards expected in the United States. Further, there can be little doubt the shedding of these exchanges in favor of their larger urban areas benefits their investors. However, to do so with the purchaser obtaining the benefit of extensive Universal Service Fund support only places the burden of neglect on the broader body of rate paying Americans. This is an abuse of the support mechanism. Further the selling company not only sheds neglected exchanges, it benefits from the higher prices paid for exchanges that would generate higher USF because of a change in the present policy.

Conclusion

27. The TCT Companies serve as examples of how well the present Universal Service Fund support mechanisms provide for the telecommunications needs of rural Americans. Except to correct major deficiencies, the process need not be changed.

28. However, should the Joint-Board determine that changes are required, it is suggested that the concept of companies (by size), study areas, rural/non-rural or wire centers be discarded in favor of the identification and targeting of high cost geographical areas on the basis of distance and density factors, the costs of serving these areas determined and then discounts applied to costs to reflect the economies of scale attributable to larger operations.

29. The determination of costs for a designated area should be based on audited financial statements reflecting actual costs for all carriers requesting support presented on a common, equitable basis. This concept eliminates the need to create a forward-looking cost regime and the use of models, which will always be subject to controversy and questionable results. It also eliminates the inequities resulting from a portability approach for competitors and the problem of support treatment for transferred exchanges. Finally, such an approach may well simplify a process that should be a candidate for phase-down when modern networks, technologies and additional product revenue streams allow for the provision of Universal Service without the need for support.

Respectfully submitted by:

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[5] Admitted in Maryland; Not in the District of Columbia.